

MICHIGAN SUPREME COURT



Office of Public Information

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PROPOSAL FOR JOINDER OF CRIMINAL CHARGES, PROCEDURE FOR SEALING COURT OF APPEALS FILES ON SUPREME COURT PUBLIC HEARING AGENDA

LANSING, MI, May 19, 2005 – Judges could act on their own initiative in joining criminal charges for trial, under a proposed court rule change that will get a public hearing before the Michigan Supreme Court on May 26.

The hearing will start at 10:30 a.m. in the Supreme Court courtroom on the 6th floor of the Michigan Hall of Justice, following a special session in which a portrait of the late Justice Theodore Souris will be presented to the Court. The Court regularly holds hearings as part of its public comment process for proposed court rules and other administrative matters before the Court.

Under Michigan Court Rule (MCR) 6.120, two or more related offenses against a single defendant may be combined, or joined, for trial on the motion of either the prosecutor or the defendant. Offenses are deemed to be “related” if they are based on the same conduct or on “a series of connected acts or acts constituting part of a single scheme or plan,” the current rule states. MCR 6.120 also permits a court to sever related offenses for trial on the motion of either the prosecutor or the defendant, so that the defendant receives a separate trial for each offense. In addition, the court may also sever offenses on its own initiative, the rule provides.

The proposed change (**File no. 2004-52**) would allow the court, on its own initiative, to also join related offenses for trial. The proposed rule states that “[j]oinder is appropriate if the offenses are related”; “related” would be defined as “the same conduct or transaction, or a series of connected acts, or a series of acts constituting parts of a single scheme or plan.”

The staff comment accompanying the proposal states that the amendment grew out of the Supreme Court’s request to the Committee on the Rules of Criminal Procedure, a group of attorneys, judges, and law professors appointed by the Court in 2002 to study and propose possible changes to current criminal procedure rules. In *People v Nutt*, 469 Mich 565 (2004), the Court held that the constitutional prohibition against double jeopardy did not bar the defendant’s Oakland County prosecution for receiving and concealing stolen weapons taken from a Lapeer County home after she was convicted of home invasion in Lapeer County for the same incident. In a footnote, the Court stated that, while “the constitution does not require the prosecutor to join at one trial all the charges against a defendant arising out of the same transaction, we will be requesting the Committee on the Rules of Criminal Procedure to consider whether our

permissive joinder rule, MCR 6.120(A), should be amended”

The Court will also invite comments on a possible change to MCR 7.211 (**File no. 2004-46**), which would create a new rule clarifying the procedure for sealing and unsealing Michigan Court of Appeals files. While incorporating trial court rules for sealing files, the proposal includes “additional language unique to cases pending in the Court of Appeals,” according to the staff comment. The proposed rule also states in part that files previously sealed by the trial court will remain sealed while in the Court of Appeals’ possession. Public requests to view the sealed trial court files will be referred to the trial court under the proposal. The proposal would also allow “[a]ny party or interested person” to challenge a motion to seal a Court of Appeals file.

The Court invites members of the public to appear and share their views on agenda items. Speakers will have three minutes each to present their views; Supreme Court Justices may ask questions of the speakers. Anyone wishing to speak at the hearing should contact the Clerk of the Court at P.O. Box 30052, Lansing, Michigan 48909 or at MSC_clerk@courts.mi.gov, no later than Tuesday, May 24. The full hearing agenda may be viewed at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/PH/5-26-05.pdf>.

Also on the May 26 agenda are:

- An amendment to MCR 9.216 which imposes a 50-page limit on the parties’ briefs in Judicial Tenure Commission proceedings, except as permitted by the Commission. Another provision states that “both the respondent and the examiner” may present oral arguments at a judicial misconduct hearing. The rule was previously adopted on January 11, 2005; the Court is considering whether to retain the rule. (**File no. 2003-20**)
- A recent amendment to MCR 5.784 which broadens proceedings on a durable power of attorney for health care to include mental health treatment. Recent statutory changes, effective January 3, 2005, create a durable power of attorney for mental health treatment decisions. The Court, which adopted the rule on March 8 in response to the statutory changes, is considering whether to retain the amendment. (**File no. 2005-06**)
- A proposed amendment to MCR 2.504, entitled “Dismissal of Actions.” The rule governs situations in which the party who brings a lawsuit voluntarily dismisses the suit. The proposed rule is aimed at clarifying that a second voluntary dismissal acts as an adjudication on the merits, which effectively ends the lawsuit. (**File no. 2004-13**)
- A proposed change to MCR 7.302, governing situations where a party’s motion for rehearing in the Michigan Court of Appeals is denied and the appellate court orders the case remanded to the trial court. The amendment would allow the losing party to seek leave to appeal to the Supreme Court after the Court of Appeals denies the party’s rehearing motion. In termination of parental rights cases, the losing party would have 28 days to file the leave application. (**File no. 2004-47**)

For more information, please visit the “One Court of Justice” website at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#proposed>.

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